The record of the State Proceeding is replete with evidence of instances of anti-competitive behavior on the part of the Carriers -- evidence which the Department found to be "specific examples of a non-competitive environment that requires further review and regulation by the Department." (Decision, at 26.) In fact, the record shows a pattern of anti-competitive activity on the part of the Carriers which has restrained independent retail cellular providers. Consequently, retail consumers are being harmed because competition is being intentionally stifled.

As noted by the Department, the anti-competitive activity of the Carriers is fueled by an improper mix of the management and the conduct of wholesale and retail operations by the Carriers and their retail affiliates. The Department found this insider relationship to be "the worst example of anti-competitive behavior . . . ." (Decision, at 26.) While certain Opponents have argued that these arrangements are permissible, the record reveals that such relationships were used in an abusive fashion by the Carriers and served as a platform to engage in anti-competitive activities. In particular, the record reveals the following.

a. Springwich/Linx.

SNET Mobility owns the "Linx" service mark and is the retail cellular affiliate of SNET. (See Tr., 5/13/94 at 276.) Springwich Limited Partnership is the wholesale cellular affiliate of SNET Telecommunications Corp. Springwich has no employees or officers and its General Partner, Springwich Cellular, Inc., which is a wholly owned subsidiary of SNET Cellular, Inc., which in turn is a wholly owned subsidiary of SNET, also has no employees or management. Both SNET Mobility (i.e., Linx) and Springwich are located in the same building and share the same floor - 7th Floor, 555 Long Wharf Drive, New Haven. (See Tr., 5/12/94 at 85.) There is no physical separation between Linx and Springwich. (See Id., at 86.)

SNET Mobility provides all of the wholesale operational services to Springwich. (See Tr., 5/13/94 at 277.) Neither Springwich Cellular, Inc., nor SNET Cellular, Inc. have a Chief Financial Officer or Vice President of Finance. (See Id., at 197. Mark Bluemling is the Vice President of Finance of SNET Mobility, the retail affiliate. (See Tr., 5/12/94 at 84.) Bluemling is the de facto financial officer of the general partner of Springwich and is also in charge of wholesale pricing. (See Id., at 87.) Bluemling is also involved with retail pricing decisions. (See Id., at 87-88 & 281. Springwich and SNET Mobility are financially assessed on a consolidated basis.

(See Id., at 107.) The pricing strategies of SNET Mobility and Springwich are determined on a consolidated basis, based on overall revenue projections. (See Tr., 5/13/94 at 272.) In fact, there are no separate pricing strategies. (Id.; and Tr., 5/16/94 at 283.

b. Metro Mobile/ Bell Atlantic Mobile.

Metro Mobile also operates in substantially the same manner as Springwich, except that the retail arm is a division within the same company. There is no separation between wholesale and retail. (See Tr., 5/16/94 at 445.) Mr. Schulman is the regional Vice President for the Bell Atlantic Metro Mobile Companies, (Tr., 5/16/94 at 406), and manages both the retail and wholesale functions of Metro Mobile. (Id., at 446.) Mr. Schulman is involved with both retail and wholesale pricing decisions. (Id., at 448-49.) As with Springwich, the record establishes that there is no separation between wholesale and retail functions, yet the wholesale Carrier is the Resellers' supplier and the retail affiliate is their competitor.

Beyond the troubling relationship between the Carriers and their retail affiliates, the record of the State Proceeding shows a litany of anti-competitive acts on the part of the Carriers. Again, the substantive issue is not whether such relationships are permissible. Rather, the issue is whether the Carriers have used the relationships in a fashion that abuses the legitimate basis on which they were permitted.

c. Unfair Access to Information.

The retail affiliates are privy to advance notice of wholesale pricing and promotional activities. Specific instances of unfair advance notice were testified to by Mr. McWay, Vice President of Connecticut Telephone, including a failure to be notified of the Roam USA program and enhanced voice messaging capability. (See Resellers Response to TE-13; and Tr., 5/20/94 at 813-14.) More generally, the retail affiliates receive de facto advance notice of any wholesale pricing or promotional strategies or plans, because the individuals responsible for wholesale pricing are the same people responsible for retail pricing. This point was made painfully obvious in the final day of hearings, during Commissioner Benedict's examination of Mark Bluemling of Springwich. (See Tr., at 1705-09.) According to Mr. Bluemling, "we" is "them" and "them" is "we." There are only so many word games that one can play before it becomes clear that retail and wholesale are one and the same, and that the

retail arms of the Carriers have routinely had a competitive advantage over the independent retail entities.

Moreover, the same problem exists in reverse. Through the wholesale supplier relationship with the independent Resellers, the Carriers are privy to the marketing plans and sales strategies of the independent Resellers. Thus, Connecticut Telephone shares marketing plans with Ernie Lindblat, an officer of SNET Cellular, who then becomes an employee of the Linx retail affiliate one day later. (See Tr., 5/20/94 at 807.) Likewise, Donna Tamayo, a Resale/Marketing manager at Linx (the retail arm of Springwich), reported to Springwich management her knowledge of a significant Connecticut Telephone customer account acquisition that would effect Linx, and actions were taken to frustrate the transaction. (Tr., 5/20/94 at 808.) Finally, Escotel and most of the independent resellers are required to present business plans to the Carriers. (Tr., 6/3/94 at 1007; see also id., at 1008 & 1009. It is not difficult to conclude that the Carriers' retail arms are privy to the confidential business information of their competitors, because retail and wholesale are one and the same.

d. Price Fixing Conduct.

The most serious allegations presented to the Department involve specific instances of misconduct regarding pricing and market tampering matters which, despite specific requests by the Carriers for time to perform due diligence and rebut Reseller allegations during the State Proceedings (See Tr., 5/20/94 at 812, 899; and Tr., 6/7/94 at 1185-6), stand unchallenged. The record paints a clear picture of attempts by the Carriers to influence retail market prices and to restrict competition in certain consumer segments of the market. The record contains the following specific allegations of misconduct.

Charlie Dammling of SNET Cellular had meetings with Resellers and discussed retail rates and the impact independent Reseller rates would have on Linx. (See Tr., 6/3/94 at 1007.) For numerous years SNET cellular inquired on a quarterly and monthly basis to discuss the rate plans that Escotel Cellular had in effect. (See Tr., 6/3/94 at 1008.) On several occasions, representatives of Linx contacted Escotel to complain that the retail rates Escotel was offering were too low, and encouraged Escotel to maintain a higher retail prices. (See Tr., 6/3/94 at 1057.) In response to questions regarding these improprieties, SNET cellular asserted that Bell Atlantic was making direct rate inquiries. Connecticut Telephone has had meetings with the

representatives of both Carriers wherein the SNET representatives have told Connecticut Telephone that the low use retail customer is "not your customer." (See Tr., 5/20/94 at 805.)

In addition, this misconduct should be viewed as part of a larger picture, in which the retail arms of the Carriers possess their independent retail competitor's marketing and sales plans by virtue of being the same entity as the wholesale side. In the State Proceeding, the Carriers tried to downplay and dismiss the seriousness of this problem, but the Resellers' point was illustrated by Mr. Bluemling of Springwich when he openly divulged the number of Connecticut Telephone's subscribership during a public session of the State Proceeding, (See Tr., 5/13/94 at 254), despite Springwich's vehement objection to any disclosure of its retail arm's subscribership earlier the same day (See Tr., 5/13/94 at 169).

e. Upside-Down Pricing.

Another anti-competitive and discriminatory practice revealed in the State Proceeding is the practice of upside-down pricing between the Carriers' bulk wholesale rates and the retail rates charged by the Carriers' retail arms. (Resellers Response to TE-13, Tr., 5/20/94 at 803-804; Tr., 6/3/94 at 1058; and see also Carriers' Bulk Cellular Tariffs of Record.) As a factual matter, both retail arms of the Carriers have offered and/or presently maintain rate plans which cost less to retail consumers than the rate that independent retail buyers can purchase bulk service from the Carriers. (See Tr., 5/12/94 at 168-171.) Not only does this practice have the effect of excluding independent Resellers from certain retail market segments, the practice becomes particularly egregious in the context in which it is occurring.

First, this is not a case of fierce competition and price undercutting by independent companies. Rather, the retail entities engaging in below-wholesale pricing are mere alter egos of the wholesale providers -- the Carriers. Second, the record of the State Proceeding clearly establishes that the Carriers' pricing strategy is a consolidated pricing strategy where blended rates are used. (Tr., 5/13/94 at 272; and Tr., 5/16/94 at 283.) In other words, pricing is determined on a consolidated revenue method such that an effective rate is determined based on the overall economic effect of retail and wholesale rates offered in the market.

Consequently, the wholesale entity is pricing against the independent buyers. What the Carriers sparingly give in wholesale rate reductions, they take away at retail by below-wholesale pricing, because the independent Resellers' cost per subscriber would increase if below-wholesale cost subscribers service is offered and the Resellers' overall margin is reduced. The net effect is that independent Resellers are priced out of large market segments and competition is stifled. Of course, the same effect does not occur on the Carrier side, because wholesale and retail operations are consolidated and, to the extent independent Resellers try to compete, the extra wholesale margin from the upside-down pricing ends up subsidizing the loss leader activities of the retail affiliates. This upside-down pricing practice is a textbook case of anti-competitive and discriminatory conduct, which directly constrains competition at the retail level and harms consumers.

A similar and more blatant case of price discrimination is occurring at the wholesale level. Specifically, Springwich's tiered tariff is per se discriminatory. (See Springwich Tariff of Record.) The practical effect of this pricing structure also shows it has a discriminatory and anti-competitive consequences in the retail market. Under the Springwich Tariff, the lowest permanent access rate is $18 for every additional subscriber over 20,000. (Springwich Tariff, Effective Rates, Part B.) The only retail entity offering Springwich service with over 20,000 subscribers is Linx with **[Confidential and Proprietary Information Redacted for Public Version]** subscribers as of year end 1993. (See Springwich Response to TE-17-05.) No independent Reseller has over 20,000 subscribers (Tr., 5/13/94 at 169-70) and, in fact, the largest independent Reseller, Connecticut Telephone, has only approximately **[Confidential and Proprietary Information Redacted for Public Version]** customers (Tr., 5/13/94 at 254) with only **[Confidential and Proprietary Information Redacted for Public Version]** lines qualifying for the next lower wholesale price tier. (See Springwich Tariff, Effective Rates, Part B.) The net effect is that Linx has **[Confidential and Proprietary Information Redacted for Public Version]** lines qualifying for a wholesale rate which is lower than the best wholesale rate Connecticut Telephone can obtain on **[Confidential and Proprietary Information Redacted for Public Version]** lines.

For smaller independent competitors, the discrimination is so severe that they cannot grow in the ordinary course of business. For example, there are ten Resellers with less than 1,000 subscribers. (See TE-17-06.) Under the Springwich Tariff, the

best permanent wholesale rate available is $22, whereas Linx , Springwich's retail arm, is paying $18. (Id.) Simply put, independent Resellers cannot engage in any price competition with Linx. Springwich's response is that small Resellers should grow to get lower rates. (See Tr., 5/13/94 at 254.) The "Catch 22" in Springwich's claim is clearly evidenced by TE-17-05. Thus, since 1987 all independent Resellers in the State of Connecticut, except Connecticut Telephone due to acquisitions of other Resellers leaving the Connecticut market, have either declined in subscribership or grown in insignificant numbers. (Id.) This is clearly shown as follows:

Reseller	1987	1993	Change
3	1,738	1507	(231)
4	1,678	1,805	127
5	844	945	101
6	440	753	313
7	157	569	412
		VS.	
LINX	[Redacted]	[Redacted]	[*Tens of Thousands*]

In effect, there has been a decrease in overall market share for independent Resellers, and an increase in concentration in the retail market as the aggregate market share of the Carriers' retail arms increases and independent Reseller shares shrink.

Although the Carriers make "state action" like arguments, the simple fact is that the Carriers proposed the tariffs, the Carriers supplied the analysis to justify the tariffs in proceedings that were not contested, and the Department, having observed the practical effect of the tariff in practice, boldly realized it had been mislead by the Carriers' financial alchemists.

f. Other Anti-Competitive and Discriminatory Acts.

In addition to the conduct discussed above, numerous other examples of anti-competitive and discriminatory practices by the Carriers were presented to the Department. For example, Springwich has used its creditor relationship with independent Resellers in an abusive and anti-competitive manner. First, Springwich violated the terms of its own tariff with respect to interest charges, by commencing the

accrual of interest before the 30 day grace period under its tariff and by charging excessive rates of interest. (See Tr., 6/3/94 at 1017-18; see also, Springwich Tariff of Record.) Also, Springwich has liens upon the Resellers' assets and uses its collateralized position and credit relationship to coerce independent Resellers not to appear before the Department. (See Tr., 6/3/94 at 1021.) Second, Springwich has forced Resellers into confidentiality agreements which prohibit them from disclosing or complaining about the nature of these coercive credit relationships. (See Tr., 6/3/94 at 1029; and Tr., 6/20/94 at 1695-98.) Several confidentiality agreements are in place. In the context of an industry that is subject to regulatory oversight, the existence of agreements that have prevented parties from petitioning the Department, under threat of suit for breach of those agreements, are contrary to public policy, frustrate regulatory oversight and are anti-competitive.

Indeed, there are other specific instances, presented to the Department, which demonstrate the Carriers' intent to frustrate regulatory oversight and restrict the independent Resellers' recourse to regulatory relief. Mr. Escobar, of Escotel Cellular, was threatened by Mr. Bluemling, an officer of Springwich, who told him that if he testified in the State Proceeding, Escotel Cellular would not be able to resolve its credit dispute with Springwich. (See Tr., 6/3/94 at 1053.) As part of settlement negotiations, Springwich demanded that Escobar sign a statement that Springwich had committed no wrongdoing. (Id.) This conduct is a gross manipulation of the regulatory process .

Other discriminatory and anti-competitive practices include preferential phone activation for Linx, the retail arm of Springwich. (See Tr., 6/3/94 at 1013 & 1076-77.) Additionally, the Resellers are prevented from participating in the exclusive MobileLink arrangement between Carriers, which acts as a referral service for users moving into Connecticut. (See Tr., 6/3/94 at 1013-16.) Similarly, the Carriers' policy on restricted access to long distance carriers is anti-competitive. Springwich ties its affiliate's long distance service --SNET America (and previous to that AT&T long distance service under a tariff 12 arrangement) -- to its cellular service, and Metro Mobile, while arguing it has equal access, limits customer choice by requiring each Reseller to designate only one long distance provider for its entire customer base. (Reseller Response to TE-13; Written Testimony of Escobar, 5/5/94 at 3; Tr., 5/12/94 at 77-8; Tr., 6/3/94 at 1001-02; and id., at 1011-12.) The net effect is that consumer choice is restricted, and competition in long distance service via cellular is impeded.

Although the Carriers rely on the fact that what they do with long distance is permitted, the real issue is that if there was effective competition in the market, consumer demand would force the Carriers to move to an equal access policy in order to be competitive.

In summary, specific evidence of anti-competitive behavior, such as market tampering, price tampering, predatory pricing, and improper use of inside information, litter the record of the State Proceeding.

V. CONSUMER WELFARE.

Although cellular is rapidly growing, the fundamental complaint of consumers is that the cost of service is too high. (See Tr., 6/3/94 at 620 & 1024; and Tr., 5/20/94 at 815.) The evidence shows that cellular prices are high and have remained static due to a lack of effective price competition between the Carriers. In a competitive market with numerous competitors, consumer price preference and buying behavior works to protect consumers. With only two competitors currently in the market, this dynamic is undermined.

The Carriers' view is that cellular service is not a necessary service and, therefore, that it is permissible for consumers to be placed at risk in an unregulated market environment. The view is that consumers can fend for themselves: i.e., it is a "capitalistic act between consenting adults." (See Tr., 5/16/94 at 515-16.) The problem -- as the Department's Petition and Decision convincingly demonstrate -- is that the cellular market in Connecticut is not sufficiently competitive to provide the requisite level of consumer protection. The underpinning of the Carriers' philosophy is also significant because it exposes as a red herring the dispute as to whether high cellular prices are attributable to "market power" or "scarcity of rents". The Carriers' philosophy is that consumers should only be protected if the service is a necessity, which they contend cellular is not. But the Carriers forget, or do not care to acknowledge, one very significant matter: radio spectrum belongs to the public domain. "Scarcity of rents" proponents argue that cellular prices are justifiably high because spectrum is a scarce resource, and they reject the contention that market power is the cause. (See Tr., 5/16/94 at 433-35; 438; see also, Reseller Response to TE-13, Hazlett Studies; and Late File Exhibit 18 (Arguments as to market power vs. scarcity of rents).)

The problem is that the cause is entirely irrelevant to the relevant inquiry, which is whether consumers are being overcharged because prices are excessive. (See Tr., 5/20/94 at 720.) Springwich received its license for nothing, by virtue of a free license grant to the telephone franchise. (Id.) If the free spectrum is very valuable and a limited resource, it is difficult to justify charging prices which reflect the value of the spectrum when this public asset was given for free to a private party. Dr. Hausman has argued that the Carriers "deserve" scarcity of rent profits because the theory of economic supply and demand says the Carriers deserve it. (See Tr., 5/16/94 at 518.) According to Hausman, "why should I be expected to give [valuable spectrum] away for free?" (Tr., 5/16/94 at 519.) From the consumer perspective, the response is, of course, why shouldn't you give back the benefits of a public asset when you got it from the public for free?

Mr. King, the Resellers' expert in the State Proceeding, also correctly observed that the only justifiable reason for maintaining high prices for spectrum is "birth control." (Tr., 5/20/94 at 721-22.) In other words, growth must be controlled in order to ration a limited resource. The record establishes that at all times the Carriers have had ample excess capacity to handle increased demand. (Late File Exhibit 7; Tr., 5/13/94 at 317-18 & 321; Tr., 5/16/94 at 468 & 494; Tr., 5/20/94 at 721-22; and Tr., 6/7/94 at 1344, 1364 & 1537.) As Hausman and each of the Carriers' witnesses acknowledged, the Carriers have and always have had counts of excess capacity. The plain fact of the matter, as the record clearly shows, is that cellular prices in Connecticut are excessive due to a lack of effective competition.

The Department is correct in electing not to abandon its regulatory authority based on the promise of increased competition in the future from the like of Nextel and unknown PCS providers. Although future competition from PCS and Nextel appears to be likely, the record shows that there is no certainty as to when effective competitors will be present in Connecticut. The question is whether it makes sense for Connecticut to abandon regulation at this juncture, based on the prediction of uncertain future events, given the litany of abuses that have occurred under modest regulatory oversight. Simply put, the Connecticut market is not sufficiently competitive to protect consumers.

The Department is authorized by Conn. Gen. Stat. § 16-250b to regulate "cellular" rates. This is the authority the Department is seeking to continue. The

Department has not determined, nor does the statute define, what services constitute "cellular" services. Therefore, the Carriers' contention that the proposed regulation is unfair because it doesn't cover PCS or ESMR is premature. Moreover, neither PCS nor Nextel are currently operating in Connecticut. Despite the Carriers' argument to the contrary, (Tr., 5/12/94 at 57), Nextel is not operational in Connecticut (it has only acquired a few existing SMR services) and has just started commercial service in the Los Angles market. (Tr., 5/13/94 at 160-61.) The Carriers argued before the Department that Nextel would be providing competitive service in early 1994, but this is not the case. (Written Testimony of Hausman, June 24, 1993; Tr., 5/16/94 at 472-73 & 526-27.) The Carriers now predict Nextel will be in Connecticut sometime in 1995. (Tr., 5/16/94 at 527.) In reality, however, it is anybody's guess when Nextel will be fully operational and competitive with cellular. (Id.) Most recently, MCI backed out of Nextel and Nextel's roll-out schedule now appears to be questionable .

With respect to PCS, future entry is even less predictable. Spectrum auctions will begin in the near future. Thereafter, PCS systems will have to be built. Under the Commission's build-out requirements, only one-third of the population must be covered in 5 years and only two-thirds in 10 years. (Late Filed Exhibit 21, Memorandum Opinion and Order, FCC 94-144, ¶ 147 et. seq. (June 9, 1994).) The Carriers have acknowledged that it may take five years before there is effective competition in the Connecticut market. (Tr., 5/13/94 at 304.)

VI. REQUEST FOR COMMISSION APPROVAL.

In light of the specific evidence that market conditions are not adequate in Connecticut, the Department is acting prudently and responsibly in requesting that it be allowed to continue regulation of the Carriers. The evidence presented in the State Proceeding demonstrates that continued regulation is necessary to protect consumers during the period of transition from a market that is not competitive to one that is sufficiently competitive to protect consumers without regulation. Most importantly, the Commission should defer to the Department's discretion as the "trier of fact." As the Carriers' own counsel admitted at the conclusion of the State Proceeding, it was one of the most thorough investigations in which he had been involved, despite having appeared at Department hearings as many as 35 times. The Department was present during the presentation of testimony and is in the best position to determine the credibility of the witnesses and to properly weigh the evidence. Metro Mobile attempts to re-litigate its case by luring the Commission into questioning the

Department's judgment, despite a thorough record and a reasoned determination by the Department.

Respectfully Submitted,

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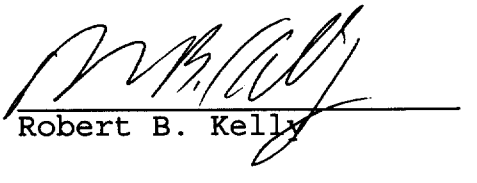

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